

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

TRACY CHANG and HOWARD HSU,

Defendants.

Case No.: 3:15-cr-00067-WHO

**DEFENDANTS TRACY CHANG'S AND HOWARD HSU'S TRIAL BRIEF**

COME NOW, Defendants Tracy Chang and Howard Hsu, mother and son, through the undersigned attorneys of record Robert E. Barnes and Joseph C. Longo, and file this trial brief.

The Constitution guarantees the right to be tried only on felony charges found by a grand jury and issued in an indictment; the right to counsel in preparation and presentation of one's case; the right to aid of the court's compulsory process; the right to cross-examine one's accusers; the right to testify on one's own behalf or remain silent; the right to call witnesses on one's behalf; and the right to a trial of all facts by an indifferent and impartial jury. *See* Constitution; *see also* *Chambers v. Mississippi*, 410 U.S. 284, 294 (1973).

**I. STATUS OF THE CASE**

A. Pending Motions: The prosecution has four motions *in limine* pending.

B. Trial Date: Voir dire and the start of trial is scheduled to commence February 6, 2017.

C. Length of Trial: The defense estimates the prosecution's case will take one week (5 business days) and the defense's case will take one week (5 business days), for a total length of trial of two weeks (10 business days).

1 **II. STATEMENT OF THE CASE**

2 A. Indictment

3 The prosecution alleges six charges: in the first count, against all defendants, a *Klein*  
 4 conspiracy to defraud the government through obstruction of the lawful functions of the IRS by  
 5 dishonest and deceitful means; in the second and third counts, against defendant Tracy Chang, the  
 6 indictment charges making and subscribing a false tax return on behalf of Didsee Corporation for  
 7 2008 and 2007, respectively, in violation of Section 7206(1) of Title 26 of the United States Code<sup>1</sup>;  
 8 in the fourth, fifth, and sixth counts, against defendant Howard Hsu, the indictment charges aiding  
 9 and assisting in the preparation of false tax returns for Didsee Corporation for 2008, 2009, and 2007,  
 10 respectively, in violation of Section 7206(2) of Title 26 of the United States Code. According to the  
 11 indictment, the illicit purpose of the conspiracy was to impede, impair, obstruct, and defeat the  
 12 lawful function of the IRS into improperly performing its tax functions concerning the taxes due  
 13 and owing from Didsee Corporation, owned by defendant Howard Hsu with defendant Tracy Chang  
 14 signing the corporation's tax returns. The indictment's alleged affirmative acts in furtherance of  
 15 misleading the IRS into not performing their assessment or collection function are the same as the  
 16 dishonest and deceitful means for the conspiracy alleged. The alleged overt acts and dishonest  
 17 means of the *Klein* conspiracy and the alleged affirmative acts intended to mislead the IRS,  
 18 according to the indictment, are: defendant Howard Hsu directed defendant Tracy Chang by e-mail  
 19 to sign a Form 8879-C, IRS F-File Signature Authorization, for Didsee's 2008 Form 1120 and to  
 20 provide it to Didsee's tax return preparer; defendant Howard Hsu directed defendant Tracy Chang  
 21 to pay for Mr. Hsu's personal expenses from Didsee's bank accounts; defendant Howard Hsu  
 22 provided false and fraudulent summaries and information to Didsee's CPA for the 2008 tax year;  
 23 defendant Tracy Chang signed Didsee's 2008 Form 1120; defendant Howard Hsu provided false  
 24 and fraudulent summaries and information to Didsee's CPA for the 2009 tax year; defendant Tracy  
 25 Chang signed Didsee's 2007 Form 1120X; and defendant Howard Hsu did not report as income on  
 26 his 2007 through 2009 personal tax returns the personal expenses that Didsee paid on his behalf and

27 \_\_\_\_\_  
 28 <sup>1</sup> The government filed a Motion to Dismiss Count 3, against defendant Tracy Chang,  
 regarding Didsee's 2007 Form 1120 on January 12, 2017.

1 at his direction.

2 The critical issues at trial, given the stipulations of the defense, are two-fold: first, whether  
3 defendants Howard Hsu or Tracy Chang intended to defraud the IRS through deception and  
4 affirmatively misled the IRS about the business deductions of Didsee by misstating that information  
5 on Didsee's federal tax returns; and secondly, whether defendants Howard Hsu or Tracy Chang  
6 believed in good faith he or she was not breaking the law.

7 B. Elements of the Offenses

8 i. Klein Conspiracy: Willfulness, Open Defiance & Good Faith

9 A conspiracy to defraud requires the government must prove the existence of an agreement  
10 to accomplish an illegal objective, an overt act in furtherance of the illegal objective, and the intent  
11 to defraud the United States. *See United States v. Bishop*, 291 F.3d 1100, 1106 (9th Cir. 2002); *see*  
12 *also United States v. Ladum*, 141 F.3d 1328, 1343 (9th Cir. 1998). The intent to defraud is critical.  
13 "There must, however, be an agreement to obstruct by deceit, craft or trickery, or at least by means  
14 that are dishonest." *United States v. Caldwell*, 989 F.2d 1056, 1058–59 (9th Cir. 1993). This has  
15 been the law for more than eight decades. *See Hammerschmidt v. United States*, 265 U.S. 182, 184  
16 (1924) (conspiracy to defraud requires an agreement to obstruct by deceit, craft, or trickery, or at  
17 least means that are dishonest). Good faith, regardless of the source of that belief is a complete  
18 defense to the intent to defraud charges. *See United States v. Faust*, 850 F.2d 575, 582 (9th Cir.  
19 1988) ("good faith, in general, constitutes a complete defense to any crime which requires  
20 fraudulent intent").

21 Few crimes are viewed with more suspicion for misuse and abuse by the executive  
22 department than conspiracy charges, especially conspiracies to fraudulently obstruct governmental  
23 functions, due to their inherent propensity for treating permissible dissent as "fraudulent  
24 obstruction."

25 "Attempts by prosecutors 'to broaden the already pervasive and wide-sweeping nets of  
26 conspiracy prosecutions' are viewed 'with disfavor.'" *United States v. Licciardi*, 30 F.3d 1127, 1131  
27 (9th Cir. 1994) (quoting *Grunewald v. United States*, 353 U.S. 391, 404 (1959).

28 Long ago Learned Hand referred to the general conspiracy statute as the "darling

1 of the modern prosecutor's nursery.” *Harrison v. United States*, 7 F.2d 259, 263 (2d  
 2 Cir. 1925)....It is instructive that *Pettibone* in 1893, *Hammerschmidt* in 1924 and  
 3 *Tanner* in 1989 are all instances where the Supreme Court rebuffed a prosecutor's  
 4 imaginative and unjustified expansion of the statute. We have only recently had to  
 5 do the same. *United States v. Caldwell*, 989 F.2d 1056, 1058–1059 (9th Cir. 1993).

6 *United States v. Licciardi*, *supra*, 30 F.3d at 1133.

7 Mere open defiance is never sufficient, and convictions on that basis will not stand:

8 Its construction [the conspiracy to defraud crime]...cannot be used as authority to  
 9 include within the legal definition of a conspiracy to defraud the United States a  
 10 mere open defiance of the governmental purpose to enforce a law by urging persons  
 11 subject to it to disobey it.

12 *Hammerschmidt*, *supra*, 265 U.S. at 189.

13 The Ninth Circuit emphasized the same principle again and again:

14 The Supreme Court has made it clear that “defraud” is limited only to wrongs done  
 15 “by deceit, craft or trickery, or at least by means that are dishonest. **Obstructing  
 16 government functions in other ways-for example, by violence, robbery or  
 17 advocacy of illegal action-can't constitute “defrauding.”** .... The federal  
 18 government does lots of things, more and more every year, and many things private  
 19 parties do can get in the government's way. It can't be that each such action is  
 20 automatically a felony.... But we're unwilling to conclude Congress meant to make  
 21 it a federal crime to do *anything*, even that which is otherwise permitted, with the  
 22 goal of making the government's job more difficult.

23 *Caldwell*, 989 F.2d at 1059 (emphasis added).

24 Hence, not disclosing something that one has no independent legal duty to disclose cannot  
 25 be a conspiracy to defraud even where it impedes the IRS. *See United States v. Murphy*, 809 F.2d  
 26 1427, 1431–32 (9th Cir. 1987).

27 The First Amendment imposes further limits.

28 Nothing in the record indicates that the advocacy practiced by these defendants  
 contemplated *imminent* lawless action. Not even national security can justify  
 criminalizing speech unless it fits within this narrow category; certainly concern  
 with protecting the public fisc, however laudable, can justify no more....  
 Prosecution for advocacy of a tax shelter program in the absence of any evidence  
 of a specific intent to violate the law is offensive to the first and fifth amendments  
 of the United States Constitution.

*United States v. Dahlstrom*, 713 F.2d 1423, 1428-1429 (9th Cir. 1983).

To conspire to defraud the United States means primarily to cheat the government  
 out of property or money, but it also means to interfere with or obstruct one of its  
 lawful governmental functions by deceit, craft, trickery, or at least by means that

are dishonest. It is not necessary that the government shall be subjected to property or pecuniary loss by the fraud, but only that its legitimate official action and purpose shall be defeated by misrepresentation, chicane, or the overreaching of those charged with carrying out the governmental intention. It is true that the words “to defraud” as used in some statutes have been given a wide meaning, wider than their ordinary scope . . . Its construction in the *Horman* case cannot be used as authority to include within the legal definition of a conspiracy to defraud the United States **a mere open defiance of the governmental purpose to enforce a law by urging persons subject to it to disobey it.**

*Hammerschmidt v. United States*, 265 U.S. 182, 188-189 (1924).

“Mere failure to disclose income would not be sufficient to show the crime charged of defrauding the United States under 18 U.S.C. §371.” *United States v. Klein*, 247 F.2d 908, 916 (2nd Cir. 1957) (direct interference with the performance of the functions of this agency, including the submission of false statements and affidavits to Treasury agents). Following *Klein*, this Circuit has likewise agreed that the mere failure to disclose income never rises to the level of a conspiracy to defraud or tax evasion. *See United States v. Voorhies*, 658 F.2d 710, 715 (9th Cir. 1981). In *United States v. Varbel*, 780 F.2d 758 (9th Cir. 1986), the defendants were charged with conspiracy to violate the currency transaction reporting laws which mandate the reporting of cash transactions exceeding \$10,000. These defendants structured their cash transactions below the threshold amount, and were indicted for conspiracy to defraud by evading those reports. In reversing the convictions, the Court held:

Since appellants were under no duty to report their currency transactions to or through the bank, there can be no concealment . . . Since the appellants have not illegally concealed matter within the jurisdiction of the IRS, the wire transfer of funds . . . could not have furthered a scheme to defraud the IRS.

*Id.* at 762.

On the strength of the decision in *Varbel*, other similar conspiracies were dismissed. *See United States v. Dela Espriella*, 781 F.2d 1432 (9th Cir. 1986); *see also United States v. Murphy*, 809 F.2d 1427 (9th Cir. 1987).

*Hammerschmidt* also suggests that, even if a conspiracy to violate a specific federal law may be prosecuted under the ‘commit any offense’ clause of section 371, a criminal prosecution under the ‘conspiracy to defraud’ clause requires a **showing of more than completely external interference with the working of a governmental program or disregard for federal laws.**

1 *United States v. Haga*, 821 F.2d 1036, 1040 (5th Cir. 1987).

2 Post-*Hammerschmidt* cases based on section 371 “conspiracy to defraud”  
3 indictments involving intangible governmental rights ordinarily have described  
4 clear interference and active contact with governmental agency functions.

4 *Id.*

5 While it is not altogether clear whether a “conspiracy to defraud” indictment must  
6 specifically allege that the conspiracy had as its object interfering with a particular,  
7 specific governmental function, it nevertheless seems plain that, for a section 371  
8 “conspiracy to defraud” conviction to stand, the essence of the conspiracy must at  
9 least involve a showing of more than **inadvertent contact with a governmental  
agency or incidental infringement of government regulations.**

9 *Id.* at 1041.

10 Equally, the misuse of obstruction offenses interfering with governmental functions, be it  
11 grand jury inquiries, SEC inquiries, or IRS actions, have met with equal concern. *See United States*  
12 *v. Aguilar*, 515 U.S. 593 (1995); *see also Arthur Andersen LLP v. United States*, 544 U.S. 696  
13 (2005); *United States v. Kassouf*, 144 F.3d 952 (6th Cir. 1998).

14 The Ninth Circuit held that even if the “means were dishonest” and the actions “had the  
15 effect of interfering with the IRS,” the crime has not been committed without the requisite nexus of  
16 intent to defraud and intent to use the deceitful means to defraud. *United States v. Licciardi, supra*,  
17 30 F.3d at 1132.

18 Similarly, the intent nexus is critical. The conspiracy is not a crime unless it has the “purpose  
19 and effect to defeat a lawful function of the government and injure others thereby.”  
20 *Hammerschmidt, supra*, 265 U.S. at 187. The intended effect has been further defined in analogous  
21 obstruction contexts as something that has the “natural and probable effect of interfering” with the  
22 governmental function at issue, though it does not have to be successful in the endeavor. *United*  
23 *States v. Aguilar*, 515 U.S. 593, 601 (1995). A defendant who “lacks the knowledge that his actions  
24 are likely to affect” the governmental function at issue “lacks the requisite intent to obstruct.” *Id.* at  
25 599. As the Ninth Circuit concluded, “a person whose conspiratorial acts have the effect of  
26 defrauding the government escapes 371 liability unless he knew that his acts would have the effect  
27 of defrauding the government.” *Licciardi, supra*, 30 F.3d at 1136 (Fletcher, J. concurring). This  
28 means *rea* requirement and careful nexus is necessary to protect First Amendment free speech and

1 Fifth Amendment due process rights. *See United States v. Dahlstrom*, 713 F.2d 1423 (9th Cir. 1983)  
 2 (prosecution for advocacy of foreign entity use in the absence of a specific intent to violate the law  
 3 is offensive to the First and Fifth Amendments of the United States Constitution); *see also United*  
 4 *States v. Little*, 753 F.2d 1420, 1443 (9th Cir. 1984) (“the mens rea requirements eliminates any  
 5 objection that the statute punishes the accused for an offense of which he or she was unaware”)  
 6 (noting *Whitman v. Fox*, 236 S.E.2d 565 (W.Va. 1977) (finding comparable state analog statute  
 7 unconstitutional).

8 As the Ninth Circuit identified in *Caldwell*, not disclosing something one has no independent  
 9 duty to disclose cannot be conspiracy to defraud even when it impedes the IRS. *United States v.*  
 10 *Caldwell*, 989 F.2d 1056, 1059 (9th Cir. 1993); *see also United States v. Varbel*, 780 F.2d 758 (9th  
 11 Cir. 1986). The failure to volunteer information is not sufficient. *See United States v. Tuohey*, 867  
 12 F.2d 534 (9th Cir. 1989). Conviction for conspiring to defraud must be “premised on activities  
 13 separate from and distinct from those sufficient to support misdemeanor punishment.” *United States*  
 14 *v. Segal*, 852 F.2d 1152, 1157 (9th Cir. 1988) (internal citations and quotations omitted). Hiding the  
 15 source and amount of money is not sufficient if the hiding is not intended to impede collection or  
 16 assessment of tax. *See United States v. Krasovich*, 819 F.2d 253, 255–56 (9th Cir. 1987). Someone  
 17 who does “no more than talk” cannot be conspiracy to defraud or it would not “withstand First  
 18 Amendment’s protection of speech.” *United States v. Russell*, 804 F.2d 571, 757 (9th Cir. 1986)  
 19 (Ferguson, J., concurring).

20 ii. False Income Tax Returns

21 a. *Spies & Cheek*: Discouraging Debt or Dissent as a Felony Tax Crime.

22 The twin pillars of criminal tax jurisprudence are *Spies* and *Cheek*, book-marking a half-  
 23 century of American criminal tax law. *See Spies v. United States*, 317 U.S. 492 (1943); *see also*  
 24 *Cheek v. United States*, 498 U.S. 192 (1991) (following *United States v. Murdock*, 290 U.S. 389  
 25 (1933). Two recent Supreme Court cases further inform the understanding of all felony  
 26 evasion/corruption/obstruction laws designed to protect governmental functions from external  
 27 corruption, evasion or obstruction. *See United States v. Aguilar*, 515 U.S. 593 (1995); *see also*  
 28 *Arthur Andersen LLP v. United States*, 544 U.S. 696 (2005).



1 As the court explained in *Spies*, it was our traditional abhorrence of imprisonment for debt  
2 that required an affirmative fraud element to felony evasion prosecutions, *Spies, supra*, 317 U.S. at  
3 498, just as the Court in *Murdock* and *Cheek* carved out a special good faith misunderstanding of  
4 the law into the willfulness definition of criminal tax statutes in recognition of the important history  
5 of our dissent on the meaning of tax laws, *United States v. Murdock, supra*, 290 U.S. at 395–96;  
6 *Cheek, supra*, 498 U.S. at 203.

7 *Aguilar* and *Arthur Andersen* extended these principles to require an intended nexus between  
8 the affirmative act and the particular governmental function intended to be obstructed. *United States*  
9 *v. Aguilar, supra*, 515 U.S. at 600; *Arthur Andersen, supra*, 544 U.S. at 707–08. A defendant’s  
10 affirmative act must not only be able to obstruct the Secretary of the Treasury’s assessment of tax,  
11 but the defendant must intend the affirmative act to obstruct the Secretary of the Treasury’s  
12 assessment of tax. This intended nexus is essential.

13 Cognizant of the potential misuse of criminal prosecutions in the tax arena, Congress and  
14 the Court prohibit criminal penalties for either debt or honest dissent. As the Supreme Court  
15 articulated, “our traditional aversion to imprisonment for debt” required “some element of evil  
16 motive” to prove tax evasion. *Spies, supra*, 317 U.S. at 498. Equally, criminal tax laws do not exist  
17 to punish “frank difference of opinion” about tax laws. *Cheek, supra*, 498 U.S. at 205 (quoting  
18 *Spies*). A “misunderstanding as to his liability for the tax” does not make a man a criminal “by his  
19 mere failure to measure up to the prescribed standard of conduct.” *United States v. Murdock, supra*,  
20 290 U.S. 389. Even an honestly absurd understanding of the tax laws requires acquittal. *See Cheek,*  
21 *supra*, 498 U.S. at 203–04.

22 America’s unique political history concerning the legality of taxes informs these constraints  
23 Congress and the Court imposed on criminalizing tax conduct. With a nation born out of religious,  
24 political and tax heresy, cradled here in the northeastern states, imprisonment for “frank difference  
25 of opinion” with the government about the meaning of the tax laws was disfavored by Congress and  
26 the Court. *Cheek, supra*, 498 U.S. at 205 (quoting *Spies*). Similarly, a country founded by indentured  
27 servants and indebted colonists was not going to use imprisonment as a means of collecting a civil  
28 debt, even a debt to the state.



1 The refusal or willful omission to act, like the willful failure to file a return, is not an  
2 affirmative act of evasion. *See id.* An affirmative act is one with an evil or fraudulent intent. *See*  
3 *United States v. Bishop*, 412 U.S. 346, 352 (1973). The government must prove beyond a reasonable  
4 doubt the defendant was aware that his affirmative act had the natural and probable effect of  
5 preventing the IRS from assessing and collecting a tax. *See United States v. Aguilar, supra*, 515  
6 U.S. 593; *see also Arthur Andersen, supra*, 544 U.S. 696.

7 These twin requirements—affirmative acts of a motive to mislead and a knowing violation  
8 of the tax law—protects against imprisonment for debt or imprisonment for honest dissent. To give  
9 effect to this carefully constructed “structure of sanctions,” conduct Congress labeled a  
10 misdemeanor could not be the basis to charge a felony instead. *See Spies, supra*, 317 U.S. at 495.

11 A comparable concern—of misapplication of criminal statutes that could be so broad they  
12 run afoul of vagueness grounds—informed the Court’s limiting constructions on  
13 corruption/evasion/obstruction felony crime statutes. *See United States v. Aguilar, supra*, 515 U.S.  
14 593; *see also Arthur Andersen, supra*, 544 U.S. 696.

15 Prior to *Aguilar* and *Arthur Andersen*, courts often assumed no nexus was required between  
16 the affirmative act and the governmental function evaded, obstructed or corrupted. *Aguilar* and  
17 *Arthur Andersen* rejected those assumptions.

18 In *Aguilar*, a federal district court judge lied to federal officers conducting a grand jury  
19 inquiry, *see United States v. Aguilar, supra*, 515 U.S. 593; in *Arthur Andersen*, an accounting firm  
20 shredded documents on the eve of an SEC inquiry, *see Arthur Andersen, supra*, 544 U.S. 696. The  
21 government’s theory was the same in both cases. The government alleged in *Aguilar* that they only  
22 needed to prove two things: first, that *Aguilar* committed an affirmative act (lying to federal  
23 officers); and secondly, this lie took place during a grand jury inquiry. *United States v. Aguilar,*  
24 *supra*, 515 U.S. at 600. The government followed the same theory in *Arthur Andersen*. *Arthur*  
25 *Anderson, supra*, 544 U.S. at 707. The government alleged in *Arthur Andersen* the accounting firm  
26 shredded documents and doing so could obstruct an SEC inquiry. *Id.* at 708. In both cases, the  
27 defendant argued that a mere fraudulent act which obstructed a governmental function could not  
28 constitute the crime without an intended nexus by the defendant that the affirmative act corrupt or

1 evade or impede the governmental function at issue. *Arthur Anderson, supra*, 544 U.S. at 707, n.10;  
 2 *United States v. Aguilar, supra*, 515 U.S. at 600.

3 The Supreme Court rejected the government's theory, agreed with the defendants and  
 4 reversed both convictions in *Aguilar* and *Andersen*. Committing a fraudulent act with the intent to  
 5 interfere with the government inquiry is not sufficient; the act itself must have an intended nexus to  
 6 the governmental function at issue.

7 As a unanimous Supreme Court reiterated just recently in *Arthur Andersen*, reversing both  
 8 the district court and appellate court below:

9 The instructions also were infirm for another reason. They led the jury to believe  
 10 that it did not have to find *any* nexus between the "persua[sion]" to destroy  
 11 documents and any particular proceeding . . . . We faced a similar situation in  
 12 *Aguilar, supra*. Respondent Aguilar lied to a Federal Bureau of Investigation agent  
 13 in the course of an investigation and was convicted of " 'corruptly endeavor[ing] to  
 14 influence, obstruct, and impede [a] . . . grand jury investigation' " under §1503. All  
 15 the Government had shown was that Aguilar had uttered false statements to an  
 investigating agent "who might or might not testify before a grand jury." We held  
 that §1503 required something more--specifically, a "nexus" between the  
 obstructive act and the proceeding. If the defendant lacks knowledge that his actions  
 are likely to affect the judicial proceeding," we explained, "he lacks the requisite  
 intent to obstruct." For these reasons, the jury instructions here were flawed in  
 important respects.

16 *Arthur Andersen*, 544 U.S. at 707 (internal citations omitted)

17 Both *Arthur Andersen* and *Aguilar* dealt with the same issues as *Murdock* and *Spies*:  
 18 knowingly and corruptly influencing a governmental activity, with knowingly defined like willfully  
 19 and corruptly influencing or corruptly endeavoring defined very much like evasion.

20 Making or subscribing a false tax return, or aiding or assisting that act, false squarely within  
 21 the structure of criminal obstruction statutes: protecting a governmental function from affirmative  
 22 acts of fraud intended to corrupt the government's ability to perform *that* function. Section 7206, as  
 23 exemplified by the Supreme Court cases above, is subject to potential misuse of criminal  
 24 prosecutions. The Supreme Court not only emphasized the requirement of consciousness of wrong  
 25 doing, but also the required consciousness of a nexus between the act and the governmental activity  
 26 attempted to be interfered with. Hence, an affirmative act intended to obstruct the assessment and  
 27 collection of tax must include that the person is conscious their affirmative acts could prevent the  
 28 Secretary from performing that function.

b. Making and Subscribing a False Tax Return

Congress, by enacting 26 U.S.C. Sections 7206(1) and 7206(2) to address the crime of filing a false tax return, chose to distinguish between the crime to be applied to the “perpetrator” and the crime to be applied to anyone else who may have helped the perpetrator.

Section 7206 provides, in relevant part:

Any person who—

(1) Declaration under penalties of perjury—Willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter . . .

shall be guilty of a felony and, upon conviction thereof, shall be fined not more than \$100,000 (\$500,000 in the case of a corporation), or imprisoned not more than 3 years, or both, together with the costs of prosecution.

26 U.S.C. § 7206.

It follows that:

To prove a violation of § 7206(1), making false statements, the government must prove that the defendant (1) filed a return, statement, or other document that was false as to a material matter; (2) signed the return, statement or other document under penalty of perjury; (3) did not believe the return, statement or other document was true as to every material matter; and (4) willfully subscribed to the false return with the specific intent to violate the law.

*United States v. Hanson*, 2 F.3d 942, 945 (9th Cir. 1993) (overruled on other grounds) (citing *United States v. Bishop*, *supra*, 412 U.S. at 350), followed in relevant part by *United States v. Boitano*, 796 F.3d 1160, 1164 (9th Cir. 2015).

Regarding the individual elements, a declaration is “false” if it was untrue when made and was known to be untrue by the person making it at the time it was made. *United States v. Morris*, 20 F.3d 1111, 1115 (11th Cir. 1994) (citing 26 U.S.C. § 7206(1)). A matter is material if it had a natural tendency to influence, or was capable of influencing, the decisions or activities of the Internal Revenue Service, as distinguished from a minor or insignificant or trivial detail. *See Ninth Circuit Model Criminal Jury Instructions 9.42*. To file a tax return requires personally delivering it to the Internal Revenue Service, via mail or another means. *United States v. Boitano*, *supra*, 796 F.3d at 1164.

Finally, violation of Section 7206(1) “is a specific intent crime that requires

1 willfulness on the part of the individual who files a false tax return.” *United States v. Morris, supra*,  
 2 20 F.3d at 1113–14. “The standard for the statutory willfulness requirement is the ‘voluntary,  
 3 intentional violation of a known legal duty.’” *Id.* at 1114 (quoting *Cheek, supra*, 498 U.S. 192).  
 4 This “requires the Government to prove that the law imposed a duty on the defendant, that the  
 5 defendant knew of this duty, and that he voluntarily and intentionally violated that duty.” *Cheek,*  
 6 *supra*, 498 U.S. at 201. “[T]he term “willful” in 26 U.S.C. § 7206(1) requires proof of specific intent  
 7 to do something that the law forbids; more than a showing of careless disregard for the truth is  
 8 required.” *United States v. Loney*, 719 F.2d 1435, 1436 (9th Cir. 1983) (citing *United States v.*  
 9 *Brooksby*, 668 F.2d 1102, 1104 (9th Cir. 1982)); *see also United States v. Dahlstrom*, 713 F.2d  
 10 1423, 1428 (9th Cir. 1983) [“[D]egrees of negligence only give rise in the tax system to civil  
 11 penalties”] (quoting *United States v. Bishop*, 412 U.S. 346, 360). Furthermore, “[s]uch specific  
 12 intent may be negated by a good-faith misunderstanding of the law or a good-faith belief that one  
 13 is not violating the law, regardless of *whether or not the belief is reasonable.*” *United States v.*  
 14 *Morris, supra*, 20 F.3d at 1115 (emphasis added) (citing *Cheek, supra*, 498 U.S. at 202).

15 Therefore, to convict defendant Tracy Chang under Section 7206(1) the government must  
 16 prove beyond a reasonable doubt that: (1) Tracy Chang filed a false tax return; (2) Tracy Chang  
 17 signed the return under penalty of perjury; (3) Tracy Chang did not believe the return was true as to  
 18 every material matter; (4) Tracy Chang willfully subscribed to the false return; and (5) Tracy Chang  
 19 did not hold a good faith belief she was complying with the provisions of the Internal Revenue Code  
 20 relating to her understanding of Didsee Corporation’s liability for the income tax, even if the belief  
 21 is unreasonable. *See Cheek, supra*, 498 U.S. at 199–201; *United States v. George*, 420 F.3d 991,  
 22 999 (9th Cir. 2005) [“The government cannot [establish the element of willfulness] without negating  
 23 the defendant’s claim that he was ignorant of the law, that he misunderstood the law, or that he held  
 24 a good-faith belief his conduct did not violate the law.”]. A defendant who acts on a good faith  
 25 misunderstanding as to the requirements of the law does not act willfully even if his or her  
 26 understanding of the law is wrong or unreasonable. *United States v. George, supra*, 420 F.3d at 999  
 27 [“Good faith reliance on a qualified tax accountant is a defense to willfulness.”]. This is a subjective  
 28 question: what Tracy Chang honestly believed, not whether she should have believed it. If the

evidence shows that any making or subscribing was merely negligent, then no conviction can lie against the defendant.

c. Aiding and Assisting the Preparation of a False Tax Return

Section 7206 provides, in relevant part:

Any person who. . .

(2) Aid or assistance—Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document . . .

shall be guilty of a felony and, upon conviction thereof, shall be fined not more than \$100,000 (\$500,000 in the case of a corporation), or imprisoned not more than 3 years, or both, together with the costs of prosecution.

It follows that the elements of a Section 7206(2) violation are: “(1) the defendant aided, assisted, or otherwise caused the preparation and presentation of a return; (2) that the return was fraudulent or false as to a material matter; and (3) the act of the defendant was willful.” *United States v. Salerno*, 902 F.2d 1429, 1432 (9th Cir. 1990); see Brian Wohlberg et. al., Tax Violations, 52 Am. Crim. L. Rev. 1659 (2015). Regarding falsity, “a false statement is material if it is essential to the accurate computation of taxes or causes the return to be inaccurate.” Brian Wohlberg et. al., Tax Violations, 52 Am. Crim. L. Rev. 1659 (2015). Furthermore:

Willfulness, as construed by our prior decisions in criminal tax cases, requires the Government to prove that the law imposed a duty on the defendant, that the defendant knew of this duty, and that he voluntarily and intentionally violated that duty. In the end, the issue is whether, based on all the evidence, the Government has proved that the defendant was aware of the duty at issue, which cannot be true if the jury credits a good-faith misunderstanding and belief submission, whether or not the claimed belief or misunderstanding is objectively reasonable.

*Cheek, supra*, 498 U.S. at 201–202.

Similar to Section 7206(1), “[t]he Supreme Court has repeatedly held that in order to make out a “willful violation” of section 7206(2) the government must prove defendants acted with specific intent to defraud the government in the enforcement of its tax laws.” *United States v. Salerno, supra*, 902 F.2d at 1432 (citing *United States v. Bishop, supra*, 412 U.S. at 361; *United States v. Krasovich*, 819 F.2d 253, 256 (9th Cir. 1987) [“conviction reversed because ‘[n]othing in

1 the circumstances of the transaction suggests that Krasovich knew that the purpose of the  
2 concealment was to evade taxes.”).

3 For example, *United States v. Crum*, 529 F.2d 1380 (9th Cir.1976), involved the  
4 defendant's participation in an illegal tax shelter scheme. The conviction for  
5 violation of section 7206(2) was upheld because the evidence indicated that the  
6 defendant knew about the scheme, and its purposes, and that they helped prepare  
7 the false information that was sent to the IRS.

8 *United States v. Salerno, supra*, 902 F.2d at 1433.

9 In other words, this means that the defendant must *know* that, in so assisting or aiding in the  
10 preparation of the return, the return would be false:

11 This longstanding interpretation of the purpose of the recurring word ‘willfully’  
12 promotes coherence in the group of tax crimes. In our complex tax system,  
13 uncertainty often arises even among taxpayers who earnestly wish to follow the  
14 law. The Court has said, ‘It is not the purpose of the law to penalize frank difference  
15 of opinion or innocent errors made despite the exercise of reasonable care.’ *Spies*,  
317 U.S., at 496, 63 S. Ct. at 367. . . . The Court's consistent interpretation of the  
16 word ‘willfully’ to require an element of mens rea implements the pervasive intent  
17 of Congress to construct penalties that separate the purposeful tax violator from the  
18 well-meaning, but easily confused, mass of taxpayers.

19 *United States v. Bishop, supra*, 412 U.S. at 359–361; *see also United States v. Salerno*, 902 F.2d  
20 1429, 1432 (9th Cir. 1990); *United States v. Kottwitz*, 614 F.3d 1241, 1269 (11th Cir. 2010); *United*  
21 *States v. Clark*, 577 F.3d 273 (5th Cir. 2009); *United States v. Searan*, 259 F.3d 434, 443 (6th Cir.  
22 2001) (citing *United States v. Sassak*, 881 F.2d 276, 278 (6th Cir. 1989)); 26 U.S.C. § 7206(2).

23 As such, if the defendant holds a good-faith belief that they are complying with the tax laws  
24 then a conviction may not stand. *See Cheek, supra*, 498 U.S. at 201 (holding that even an  
25 unreasonable but good-faith mistake negates willfulness); *United States v. Cohen*, 510 F.3d 1114,  
26 1123-24 (9th Cir. 2008) (holding that trial court's exclusion of psychiatrist's testimony that  
27 defendant was incapable of willfulness was not harmless error because testimony could have  
28 established good-faith defense); *United States v. Ervasti*, 201 F.3d 1029, 1041 (8th Cir. 2000) (“A  
good faith belief that one's conduct does not violate tax laws negates the willfulness element of this  
offense.”); *United States v. Salerno, supra*, 902 F.2d at 1432 (finding defendant not guilty on § 7206  
charge because government could not provide any evidence that defendant specifically intended to



1 cause filing of false returns); *United States v. George*, *supra*, 420 F.3d at 999 [“Good faith reliance  
2 on a qualified tax accountant is a defense to willfulness.”].

3 Therefore, to convict defendant Howard Hsu of aiding, assisting, procuring, counseling, or  
4 advising the preparation or presentation of a tax return which is fraudulent or false as to any material  
5 matter, in violation of Section 7206(2), the government must prove beyond a reasonable doubt that:  
6 (1) Howard Hsu aided, assisted, or otherwise caused the preparation and presentation of a return;  
7 (2) the return was fraudulent or false as to a material matter; (3) Howard Hsu knew that the return  
8 would be false; (4) Howard Hsu acted willfully; and (5) Howard Hsu did not hold a good faith belief  
9 that he was complying with the provisions of the Internal Revenue Code relating to his  
10 understanding of Didsee Corporation’s federal tax liability, even if his belief is or was unreasonable.

### 11 C. Preliminary Instructions

12 The defense prefers no preliminary statement read to the jury pool. Regarding the final jury  
13 of twelve, the parties agree to have preliminary instructions read, as suggested by the Ninth Circuit  
14 Model Criminal Jury Instructions. Specifically, the parties request that instructions one through  
15 twelve of the instructions submitted to the Court on January 23, 2017, be read to the jury before  
16 opening statements.

### 17 D. Opening Statements

18 The principal concerns for the defense would be appeals to class prejudice or racial  
19 prejudice, references to excluded or inadmissible evidence, or appeals to the jury’s pecuniary self-  
20 interest in taxes. As the Ninth Circuit directed, “while prosecutors are not required to describe  
21 sinners as saints, they are required to establish the state of sin by admissible evidence unaided by  
22 aspersions that rest on inadmissible evidence, hunch or spite.” *United States v. Sanchez*, 176 F.3d  
23 1214, 1222 (9th Cir. 1999).

24 “As a general rule, a prosecutor may not express his opinion of the defendant’s guilt or his  
25 belief in the credibility of government witnesses.” *Sanchez*, *supra*, 176 F.3d at 1224.

26 A “persistent appeal to class prejudice” is so offensive to the due process clause that no  
27 prosecution can obtain a criminal conviction by such method. *See United States v. Stahl*, 616 F.2d  
28 30, 33 (2nd Cir. 1980). As the Supreme Court long ago identified, “appeals to class prejudice are



1 highly improper and cannot be condoned and trial courts should ever be alert to prevent them.”  
2 *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 239 (1940). Indeed, “appeals to class  
3 prejudice must not be tolerated in the courtroom.” *Sizemore v. Fletcher*, 921 F.2d 667, 671 (6th Cir.  
4 1990).

5 Equally, references to jurors as taxpayers or appealing to the pecuniary self-interest of the  
6 jurors is patently improper. “Remarks invoking the individual pecuniary interests of jurors as  
7 taxpayers are universally viewed as improper.” *United States v. Palma*, 473 F.3d 899, 902 (8th Cir.  
8 2007).

9 E. Evidentiary Issues At Trial

10 a. Prosecution’s Evidence of Deductions

11 The bulk of the prosecution’s evidence concerns deductions taken on behalf of Didsee  
12 corporation. According to the indictment, these deductions were improper and were actually  
13 personal expenses for Howard Hsu or Tracy Chang. However, notably, neither Mr. Hsu nor Ms.  
14 Chang were ever afforded an opportunity to explain to the IRS why the deductions were actually  
15 proper or at least why they believed the deductions to in compliance with the Internal Revenue  
16 Code. In fact, this case never had a civil component to it whatsoever. Although neither defendant  
17 has any criminal record, the IRS immediately assumed, without conclusive evidence, that Mr. Hsu  
18 and Ms. Chang conspired to defraud the government by overstating Didsee corporation’s  
19 deductions. This has no basis in reality, as will be concluded by means of this jury trial. Moreover,  
20 a civil setting would permit the defendants to freely explain each and every deduction, without a  
21 prison sentence haunting their every representation, and would have resolved this matter without  
22 any criminal component whatsoever.

23 Looking further back into the history of this case, it becomes evident why the IRS rushed  
24 for an indictment. Early on, IRS Special Agent Justin Fletcher expended significant government  
25 resources in an attempt to piece together a much larger, but nonexistent, Chinese money laundering  
26 conspiracy involving the defendants’ family, including Mr. Hsu’s brother and father in Taiwan.  
27 Ultimately, that investigation floundered. To avoid coming up empty handed, Special Agent  
28 Fletcher instead shifted his attention to Didsee corporation and the seemingly high deductions

1 claimed on the Form 1120 tax returns. Defense counsel believes the Special Agent's Report will  
2 elucidate this issue in more detail, and has repeatedly requested and filed motions to have that report  
3 disclosed. However, to date, the prosecution has not provided the Special Agent's Report. Once that  
4 is disclosed, it will become evident that this litigation is a waste of resources and compounds an  
5 already absurd expenditure based on a single special agent's fantasy.

6 *b. Reference by the Prosecution Defendant Tracy Chang as an Accountant*

7 The defense expects the prosecution to refer to Ms. Chang as an accountant, as has been  
8 done throughout this case, such as in the March 18, 2011, search warrant application. However,  
9 both the government and the defense know that Ms. Chang is, in fact, not an accountant; Ms. Chang  
10 has continuously stated her position is in accounts payable, which is materially different than an  
11 accountant. The prosecution's sole evidence pertaining to this alleged title for Ms. Chang is a single  
12 bank application which records Ms. Chang's occupation as "accountant" at Golden Gate University,  
13 which the defense contends was filled out by a bank employee, not Ms. Chang herself. Thus, the  
14 prosecution should not be permitted to paint her as an accountant, which likely could influence the  
15 jury in their consideration of the evidence presented against Ms. Chang.

16 *c. Official Documents and Business Records*

17 The prosecution includes in its exhibit list various documents filed with public agencies.  
18 Such documents are inadmissible hearsay unless the records were prepared by public officials  
19 pursuant to the duties of their offices. *See Olender v. United States*, 210 F.2d 795 (9th Cir. 1954).  
20 The same logic applies to business records: in order for the records to be admissible, the substance  
21 of the documents must be filled out by a business employee for business reason pursuant to regularly  
22 conducted business duties.

23 *d. Defendants' Subjective Good Faith Beliefs*

24 There is nothing as fundamental to Americans' concept of a fair trial than the chance for the  
25 accused to explain their intentions and reference the objective evidence that supports their  
26 intentions. Due process secures these rights. *See Chambers v. Mississippi*, 410 U.S. 284, 294, 93  
27 S.Ct. 1038, 1045 (1973).

28 There are two issues of intent relevant to this case: first, whether the defendants intended to

1 defraud the government and fraudulently obstruct certain specified functions of the Internal  
 2 Revenue Service; and second, whether the defendants acted willfully in all of the charges, which  
 3 requires the government to prove the defendants did not have a good faith belief he or she was  
 4 complying with the tax laws as he or she understood them.

5 Mere open defiance is not a criminal conspiracy to defraud. *See e.g., Hammerschmidt v.*  
 6 *United States*, 265 U.S. 182, 184 (1924) (conspiracy to defraud requires an agreement to obstruct  
 7 by deceit, craft, or trickery, and at least means that are dishonest). Deceit is a critical requirement.  
 8 *United States v. Caldwell*, 989 F.2d 1056, 1058-1059 (1993). “Good faith, in general, constitutes a  
 9 complete defense to any crime which requires fraudulent intent”. *United States v. Faust*, 850 F.2d  
 10 575, 582 (9th Cir. 1988). The prosecution must prove a defendant did not have a good faith belief  
 11 he was complying with the tax laws to find he acted willfully in violation of tax laws. *See Cheek v.*  
 12 *United States*, 498 U.S. 192 (1991)

13 The Sixth Amendment further secures the right to the accused to present evidence on his  
 14 behalf of his innocent intentions. *See* U.S. Const. amend. VI. On this issue in the context of  
 15 willfulness for tax crimes, the Supreme Court was very clear: “forbidding the jury to consider  
 16 evidence that might negate willfulness would raise a serious question under the Sixth Amendment’s  
 17 jury trial provision.” *Cheek*, 498 U.S. at 195. What evidence was the Supreme Court referring to?

18 The defendant has testified as to what he states are his interpretations of the United  
 19 States Constitution, court opinions, common law and other materials he has  
 20 reviewed. . . He has also introduced materials which contain references to quotations  
 from the United States Constitution, court opinions, statutes, and other sources.

21 *Id.* at 196, n.5.

22 Defendants Howard Hsu or Tracy Chang may testify as to his or her beliefs and introduce  
 23 the materials he or she reviewed and read, from court cases to instructions from a licensed tax  
 24 professional, to explain his or her subjective belief. While such materials may be legal materials,  
 25 they will be introduced into evidence for the sole and limited purpose of showing what the  
 26 defendants relied upon in coming to their subjective conclusions about the legal obligations of  
 27 Didsee corporation. These and other materials are admitted solely to show a lack of willfulness, not  
 28 for the truth of the matter asserted, and as such do not run into any problem concerning hearsay. *See*

1 *United States v. Harris*, 942 F.2d 1125, 1131 (7th Cir. 1991) (error to exclude letters which  
 2 explained why defendant thought moneys received were not taxed and defendant must be entitled  
 3 to admit any evidence which is “objective” evidence they read in coming to their beliefs); *see also*  
 4 *Cheek v. United States*, 498 U.S. 192 (1991).

5 The rule in this Circuit clearly is:

6 The Supreme Court in *Cheek* held that “forbidding the jury to consider evidence that  
 7 might negate willfulness would raise a serious question under the Sixth  
 8 Amendment’s jury trial provision.” *Cheek* 111 S.Ct. at 611. Although a district court  
 9 may exclude evidence of what the law *is* or *should be*, it ordinarily cannot exclude  
 10 evidence relevant to the jury’s determination of what a defendant *thought the law*  
 11 *was* in § 7203 cases because willfulness is an element of the offense. In § 7203  
 12 prosecutions, statutes or case law upon which the defendant claims to have actually  
 13 relied are admissible to disprove that element if the defendant lays a proper  
 14 foundation which demonstrates such reliance.

11 *United States v. Powell*, 955 F.2d 1206, 1214 (1992) (emphasis in original).

12 Hence, *Cheek* and *Powell* require Defendant Howard Hsu or Tracy Chang be allowed to  
 13 testify as to his or her beliefs about why their intent was not fraudulent, and why he or she did not  
 14 act willfully, whether those beliefs were “alternative” beliefs or not, as well as any evidence relied  
 15 upon. Additionally, the Ninth Circuit further authorized admitting certain statements and  
 16 representations made by the government, such as government publications and government  
 17 manuals. *See United States v. Van Griffin*, 874 F.2d 634, 638 (9th Cir. 1989) (government manuals  
 18 admissible as party admissions under Fed.R.Evid. 801(d)(2)(D)).

19 The defendants’ beliefs are on trial, not the law. As is, no jury is ever confused on this; they  
 20 understand they are evaluating the defendants’ beliefs, not whether they agree with the beliefs, and  
 21 this is the whole point of the good faith defense to willfulness. The only juror problem on this issue  
 22 can be that some jurors wish to convict regardless of a defendant’s good faith, and many of these  
 23 same jurors admit they would refuse a judge’s good faith instruction on the issue.

24 Accordingly, any statements of this manner should be permitted and accepted into evidence  
 25 for the jury’s consideration.

### 26 **III. DISPUTED LEGAL ISSUES**

27 The principal legal issue in dispute is the prosecution’s apparent assertion that *mens rea* is  
 28 not a required element for a criminal tax offense. However, this assertion has no merit because it

contradicts controlling Ninth Circuit and Supreme Court precedent. The Supreme Court and the Ninth Circuit have expressly recognized that criminal tax charges are crimes of specific intent, thus requiring knowledge and intent on the part of the defendant that their actions would result in an illegal act. *United States v. Salerno, supra*, 902 F.2d at 1432 (citing *United States v. Bishop, supra*, 412 U.S. at 361). It is not enough for the IRS to assert that a return was filed incorrectly, the defendants must have known of that impropriety at the time of filing the return to be convicted of a violation. *See United States v. Bishop*, 412 U.S. 346, 361 (1973); *United States v. Salerno*, 902 F.2d 1429, 1432 (9th Cir. 1990); *United States v. Kottwitz*, 614 F.3d 1241, 1269 (11th Cir. 2010); *United States v. Clark*, 577 F.3d 273 (5th Cir. 2009); *United States v. Searan*, 259 F.3d 434, 443 (6th Cir. 2001) (citing *United States v. Sassak*, 881 F.2d 276, 278 (6th Cir. 1989)); *United States v. Morris*, 20 F.3d 1111, 1115 (11th Cir. 1994) (citing 26 U.S.C. § 7206(1)); *see also* 26 U.S.C. § 7206(2). As such, “[g]ood faith, in general, constitutes a complete defense to any crime which requires fraudulent intent”. *United States v. Faust*, 850 F.2d 575, 582 (9th Cir. 1988).

Similarly, the prosecution incorrectly relies on the Ninth Circuit Model Criminal Jury Instructions for the proposition that filing the return is not an element of a Section 7206(1) offense. *See* Ninth Circuit Model Criminal Jury Instructions 9.39 (2010). However, controlling Ninth Circuit precedent unambiguously states that, in the Ninth Circuit, “‘filing’ is an element of a conviction under § 7206(1),” and the Court also noted that it knows “of no Supreme Court case holding that ‘filing’ is *not* a required element under § 7206(1).” *United States v. Boitano, supra*, 796 F.3d at 1164. Moreover, the introduction to the Ninth Circuit Model Criminal Jury Instructions notes that:

The instructions in this Manual are models. They are not mandatory, and must be reviewed carefully before use in a particular case. They are not a substitute for the individual research and drafting that may be required in a particular case, nor are they intended to discourage judges from using their own forms and techniques for instructing juries.

Ninth Circuit Model Criminal Jury Instructions, *Introduction to the 2010 Edition* (2010).

As such, the more recent Ninth Circuit precedent controls.

Because of this, it is notable that the indictment never alleges that defendant Tracy Chang ever “filed” a Form 1120 on behalf of Didsee corporation, despite clearly being an element

1 required for a Section 7206(1) violation.

2 **IV. CONCLUSION**

3 Defendants Howard Hsu and Tracy Chang request nothing more, and nothing less, than a  
4 fair trial on the merits of the charges and the facts in actual dispute.

5  
6  
7 Respectfully submitted this 16th day of January 2017.

8  
9 /s/ Robert E. Barnes

10 ROBERT E. BARNES  
11 Attorney for Defendant  
Howard Hsu

12 /s/ Joseph C. Longo

13 JOSEPH LONGO  
14 Attorney for Defendant  
Tracy Chang  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

TRACY CHANG and HOWARD HSU,

Defendants.

Case No.: 3:15-cr-00067-WHO

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT:

I, ROBERT E. BARNES, am a citizen of the United States and am at least 18 years of age.  
My business address is 601 South Figueroa Street, Suite 4050, Los Angeles, California 90017.

I am not a party to the above titled action. I have caused service of this Defendants' Trial  
Brief on the following parties by filing with the court's electronic filing system (ECF):

Asst. United States Attorney Colin Sampson;

Asst. United States Attorney Matthew Kluge.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 16, 2017.

/s/ Robert E. Barnes

Robert E. Barnes

Attorney for Defendant  
Howard Hsu